

The University of Chicago

CAPITAL PUNISHMENT IN ANCIENT  
ATHENS

A PART OF A DISSERTATION SUBMITTED  
TO THE FACULTY OF THE DIVISION  
OF THE HUMANITIES IN CANDIDACY FOR  
THE DEGREE OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF GREEK LANGUAGE  
AND LITERATURE

1935

By  
IRVING BARKAN

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## PREFACE

Unless otherwise specified the translations of the Loeb Classical library have been used. For Demosthenes the version of Kennedy has been used. This study was undertaken at the suggestion of Professor R. J. Bonner to whom I am indebted for his advice and valuable criticism. Acknowledgment is due also to Professor Gertrude Smith for her interest and helpful suggestions.



CHAPTER I  
INTRODUCTION

A careful perusal of the sources leads to the conclusion that human life was little valued by the Athenians when balanced against the letter of the law. Capital punishment was resorted to very frequently. The code of Draco prescribed the death penalty for offenses generally, small or great. A man who stole vegetables was punished with the same severity as a perpetrator of sacrilege or homicide, according to Plutarch's account.<sup>1</sup> But that this code was proverbial for its severity even in antiquity is attested by the statement of Demades who said that Draco wrote his laws not in ink but in blood.<sup>2</sup> Solon's revision of the laws brought sanity into the penal system and a mitigation of the penalties in many cases. A distinction was drawn between various crimes, and the penalties were made more or less proportionate to the gravity of the offenses.

The death penalty was provided for certain offenses such as high-treason, temple-robbery, kakourgemata, and illegal practices in connection with the grain supply. But in a great number of cases the Athenians left the choice of penalties to the dicasts. Suits in general were classified as assessable (τιμήτοις) or non-assessable (ἀτιμήτοις) depending upon whether the dicasts

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<sup>1</sup>Solon xvii. The punishments allotted by all the early Greek lawgivers were exceedingly severe. Cf. Gertrude Smith, "Early Greek Codes," Classical Philology, XVII (1922), 187-201.

<sup>2</sup>Solon xvii.



assessed the penalty or whether the penalty was fixed by law.<sup>1</sup> In the case of an ἀγών ἀρίμης the dicasts deliberated merely on the guilt or innocence of the defendant. If declared guilty the condemned was sentenced to the prescribed penalty. The case of Miltiades, who when indicted on a charge of ἀπάτη τοῦ δήμου was saved from death at the intercession of the Prytanis, is exceptional.<sup>2</sup> Apparently there was a law that a man be put to death for deceiving the people of Athens. But the case was tried before the Assembly which had sovereign power and could change the penalty in view of extenuating circumstances. An ordinary court could not, however, commute a penalty fixed by law. In assessable cases the accuser, in his complaint, set an estimate (τίμημα) as to what the defendant should suffer or pay (παθεῖν ἢ ἀποτίσαι). The court after hearing both parties voted first on the question of culpability. If a verdict of guilty was reached they voted again on the nature of the penalty. But the court was limited to a choice between two penalties, that which was demanded by the prosecutor and the counter-penalty (ἀντιτίμημα) which the defendant himself was allowed to propose. It was to the interest of the defendant to estimate the temper of the jury and to name a substantial counter penalty that could be seriously entertained by the dicasts. There can be no question that Socrates could have saved his life had he proposed a reasonable counter-penalty when the verdict of his guilt was pronounced. But added to the high tone which he adopted throughout the trial, he an-

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<sup>1</sup>The sources do not specify when this classification was instituted. It is, no doubt, of post-Draconian origin since Draco provided the death penalty for all offenses. One is tempted to suggest that Solon introduced it.

<sup>2</sup>Herod. vi. 136; Plato Gorgias 516 E.



tagonized the dicasts even more by proposing that the sentence be free board in the Prytaneum. Later at the bidding of his friends he named the sum of thirty minae, which turned against him even those who had voted in his favor on the first ballot.<sup>1</sup> This shows, also, that the defendant might change the penalty should his first offer not be acceptable. From the case of Apollodorus who in his prosecution of Arethusius demanded at first the death sentence and later relented and consented to a fine of one talent, it seems that the prosecutor, too, could of his own accord or at the supplication of the defendant's family change his penalty to a milder one.<sup>2</sup> Almost invariably defendants on a capital issue would make the conventional appeal to pity by bringing into court their weeping wives and children to rouse the compassion of the dicasts.

With the systematization of their penal law the Athenians developed a definite machinery for the punishment of criminals. The gradual changes in this machinery of punishment and the tendency on the part of the Athenians to minimize as much as possible the gruesomeness of execution form the topic of this study.

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<sup>1</sup>Plato Apol. 38 B.

<sup>2</sup>Dem. lli. 18.

### CHAPTER III

#### STONING

Stoning was the earliest form of community punishment among the ancients, for stones were the most natural and the most readily obtainable means of defense or attack.<sup>1</sup> What was originally a means of self-help, "eine Handlung öffentlicher Selbsthilfe,"<sup>2</sup> occasioned by the violent indignation of the people was gradually sanctioned by custom and became a regular mode of punishment. The underlying principle of stoning was that it had to be executed not by a few individual members but by the entire community as such. It thus represented more vividly the general feeling and brought a smaller share of guilt to the individual participant.<sup>3</sup> Plato in his Laws<sup>4</sup> states that the stoning of a homicide should take place in the name of the entire community through their official representatives.

In Greece we find that the practice of stoning prevailed from very early times. In the Heroic period it was a recognized form of community punishment. Hector upbraiding Paris for his cowardice says, "Nay, verily, the Trojans are utter cowards else wouldest thou ere this have donned a coat of stone by reason of

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<sup>1</sup>This form of punishment may have a religious origin. For its possible connection with the scape-goat concept cf. R. Hirzel, "Die Strafe der Steinigung," Abhandl. d. Königl. Sächs. Gesellschaft, Phil. Hist. Kl., XXVII, 244.

<sup>2</sup>J. H. Lipsius, Das Attische Recht und Rechtsverfahren, (Leipzig, 1915), p. 6; G. Gilbert, Beitr. z. Entw. des gr. Gerichtsverf., (Leipzig, 1897), p. 462.

<sup>3</sup>Cf. Hirzel, op. cit., p. 239. "Auch das lässt sich hören, das eine Todesstrafe die von allen vollzogen wird eben dadurch die Rache im Keim erstickt."

<sup>4</sup>873 B; cf. Eurip. Iph. Aul. 1350 where the phrase πάντες

all the evil thou hast wrought."<sup>1</sup> In the *Odyssey*, Penelope reproaching Antinous who plotted to kill Telemachus reminds him of the fact that Odysseus had saved his father from violent death at the hands of the Ithacensians who were indignant at his raid upon the Thesprotians, their allies.<sup>2</sup> Though not stated explicitly, stoning was, no doubt, the penalty that the Ithacensians intended to mete out. Helen was in danger of stoning at the hands of Menelaus who was urged to it by Hecuba to requite the long toils of the Achaeans.<sup>3</sup> Later she was exposed to the same danger at the hands of the people of Rhodes instigated by Polyxo, wife of Tlepolemus who had died at Troy.<sup>4</sup> Electra says of the fact that Menelaus upon his return from Troy brought Helen to the city of Argos at night:

. . . But Helen--yea, that cause  
Of countless woes--'neath screen of night he sent  
Before, unto our house, lest some, whose sons  
At Ilium fell, if she by daylight came  
Should see and stone her.<sup>5</sup>

When Achilles attempted to save Iphigenia at Aulis he was in danger of being stoned by the Hellenes.<sup>6</sup> Pentheus, who opposed the worship of Dionysus, says to his servants:

. . . Yea, rage through the city and track down  
That girl-faced stranger, who upon our wives  
Bringeth strange madness, and defiles our beds.  
And if ye catch him, hale him bound with chains  
Hither, that death by stoning be his meed.<sup>7</sup>

The chorus in the *Ajax* of Sophocles feared to "share a bitter death by stoning"<sup>8</sup> at the hands of the army were they to espouse the cause of the hero who had killed the cattle which were the

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<sup>1</sup>Ελληνες is used in connection with the attempted stoning of Achilles.

<sup>1</sup>*Il.* iii. 56 ff.

<sup>2</sup>xvi. 424 ff.

<sup>3</sup>Eurip. *Troades* 1036 ff.

<sup>4</sup>Polyaenus i. 13.

<sup>5</sup>Eurip. *Orestes* 57 ff.

<sup>6</sup>Eurip. *Iph. Aul.* 1350

<sup>7</sup>Eurip. *Bacchae* 355 ff.

<sup>8</sup>254 ff.; cf. 728.



army's booty. In Sophocles' Oedipus Colonos<sup>1</sup> the exiled parricide remarks, "No, verily, for in that first day, when my soul was seething, and my darling wish was for death, aye death by stoning, no one was found to help me in that desire."

In the tragedies stoning is frequently mentioned as a deliberate form of punishment. Creusa was in danger of being stoned to death when her plot to murder Ion was detected. The punishment in this case was not a matter of the people's taking the law into their own hands but was decreed by a general vote of "Delphi's lords."<sup>2</sup> In Aeschylus' Agamemnon the chorus warns Aegisthus that he will pay for his part in the murder of the king, saying:

I tell thee in the hour of justice (ἐν δίκῃ) thou thyself--be sure of that--shalt not escape the people's curses and death by stoning at their hand.<sup>3</sup>

Electra declares to her brother, the matricide:

. . . . This is the appointed day on which the city of the Argives will deliver in the votes, whether it be fitting that we two suffer death by the pelting stone.<sup>4</sup>

Disobedience to the command of a tyrant might lead to stoning by the people at the instigation of the ruler. Eteocles, who would not suffer his brother Polynices his time to rule, warns the chorus of Theban maidens in these words:

Now, if there be one who shall refuse obedience to my authority, man woman or whatsoever is betwixt, sentence of death shall be passed upon him, and he shall in no wise escape destruction by stoning at the people's hands.<sup>5</sup>

Similarly, Creon later forbids anyone to bury Polynices on penalty

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<sup>1</sup>431 ff. Jebb's translation

<sup>2</sup>Eurip. Ion 1222 ff.

<sup>3</sup>1616 ff.

<sup>4</sup>Eurip. Orestes 46-52: κυρία δ' ἥδ' ἡμέρα, ἐν ᾗ διοίσει  
ψῆφον Ἀργείων πόλις, εἰ χρεὶ θανεῖν νῶ λευσίμῳ πετρώματι.  
Cf. 442, 536, 614, 625, 863, 914, 944; cf. Aeschylus Eumenides  
189.

<sup>5</sup>Aeschylus Sept. 196-199.

of death by stoning.<sup>1</sup> The stoning of Palamedes<sup>2</sup> was the result of a formal process. He died at the command of the Atridae. Euripides seems to confirm this in one of his extant fragments.<sup>3</sup> These mythic-poetic examples reflect the historical truth. The citations from the poets offer indisputable evidence that in the early period of Greek history stoning was a legally recognized form of execution. Gilbert<sup>4</sup> considers stoning, at best, a means of execution without any legal proceedings. Swoboda<sup>5</sup> is also of the opinion that stoning was carried out by the community "ohne Rechtsverfahren." Orestes and Electra, however, were threatened with stoning not as a result of an outbreak of blind passion, but upon the decision of an assembly of the people who sat to try the case of the matricides. On the basis, then, of the foregoing evidence it is clear that in this early period stoning was very often a deliberate and judicial punishment.<sup>6</sup>

Stoning seems to have continued as a mode of punishment in various parts of Greece even during the historical period. Pausanias<sup>7</sup> recounts that the Arcadians stoned two kings by the name of Aristocrates, one for his treasonable activities with the

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<sup>1</sup>Soph. Antigone 36; cf. Eurip. Heracl. 55-60.

<sup>2</sup>Scholiast on Eurip. Orestes 432.

<sup>3</sup>A. Nauck, Tragicorum Graecorum Fragmenta, (Leipzig, 1889), pp. 541 ff.

<sup>4</sup>G. Gilbert, Beitr. z. Entw. des gr. Gerichtsverf., (Leipzig, 1897), p. 462.

<sup>5</sup>H. Swoboda, Beiträge zur Griechischen Rechtsgeschichte, (Weimar, 1905), p. 39, n. 1.

<sup>6</sup>Cf. Theodore Thalheim, Lehrbuch der Griechischen Rechtsaltertümer, (Leipzig, 1895), p. 138, n. 2; T. J. Thonissen, Le Droit Pénal de la République Athenienne, (Brussels, 1876), p. 33. For a definition of mob violence and lynch law see R. J. Bonner and Gertrude Smith, The Administration of Justice from Homer to Aristotle, (Chicago, 1930), p. 23.

<sup>7</sup>iv. 22. 7; viii. 5. 8; viii. 5. 12.

Spartans, the other for his rape of a priestess of Artemis. In Athens, however, stoning, as we shall see, was not considered a legal means of execution, during the historical period. It took place only as the result of popular excitement but had no legal sanction. The earliest case of stoning in the historical period among the Athenians dates back to the attempted tyranny of Cylon. The insurgents died by various deaths, some, says Plutarch,<sup>1</sup> by stoning. He adds that the wives of Cylon's adherents escaped only by becoming suppliants. This was, evidently, an instance of the people taking the law into their own hands. The Alcmeonidae, moreover, brought upon themselves the guilt of sacrilege in consequence of the way in which Megacles had treated the capitulating conspirators, and were banished from Athens. The fate of Lycidas who advised obedient submission to the Persians is recorded by Herodotus in these words:

Then Lycidas, one of the Councillors, gave it for his opinion that it seemed to him best to receive the offer brought to them by Murychides, and lay it before the people. This was the opinion which he declared, either because he had been bribed by Mardonius, or because the plan pleased him; but the Athenians in the Council were very wroth, and so too, when they heard of it, were they that were outside; and they made a ring 'round Lycidas and stoned him to death.<sup>2</sup>

There was, then, no trial nor were there any legal proceedings, and the case resembles very much the procedure attendant upon a modern lynching. Herodotus continues, "And when the Athenian women learned what was afoot, one calling to the other and bidding

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<sup>1</sup>Solon xii; cf. Scholiast on Aristophanes' Knights 447.

<sup>2</sup>Herod. ix. 5; cf. Dem. xviii. 204 where, however, the name Cyrsilus is used. Hirzel believes that Cyrsilus, mentioned in Demosthenes, is not to be identified with Lycidas referred to in Herodotus (op. cit., p. 231). The view held here is in agreement with that expressed in How and Wells, A Commentary on Herodotus, ad loc., where it is shown that both Demosthenes and Herodotus refer to the same event which was a well-known case recorded in history. The confusion is due to Cicero's misinterpretation of the passage in Demosthenes (De. Off. iii. 11. 48).



her follow they went of their own motion (αὐτοκείμενος) to the house of Lycidas, and stoned to death his wife and children." This unprecedented act of violence could only be possible at a time of passionate rage occasioned by the hysteria of war. Another case of stoning that took place during the period of the Persian war was that of Artayctes' son for the wanton impiety of his father.<sup>1</sup> Though it is true that it was done at the command of the general, Xanthippus, the execution was carried out in the spirit of revenge and not as a legalized punishment. The reason they chose this antiquated and no longer legal mode of community punishment may have been due to their desire to avoid incurring any individual guilt. This unusual barbarity may be explained, too, by the enormity of the outrage and by Athenian deference to local religious feeling. Artayctes had stolen from the treasure of Protesilaus and had carried off votive offerings. He was even guilty of gross immorality at the very seat of the shrine. Aelian relates that the great tragedian Aeschylus was in danger of being stoned by the Athenians because he was accused of impiety in one of his dramas. It was only through the intervention of his brother, Ameinias, who reminded the people of his bravery at Salamis that the poet escaped this fate.<sup>2</sup> Now, even if we were to give credence to this story which is not authenticated elsewhere, we

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<sup>1</sup>Herod. ix. 120.

<sup>2</sup>Aelian V.H. v. 19. An interesting parallel is found in Demosthenes' oration On the Embassy where the orator, speaking of his political opponent and arch enemy Aeschines, reminds the Athenians of his bad acting in these words, "When he [Aeschines] played the miseries of Thyestes and the men at Troy, you drove and hissed him off the boards and nearly stoned him to death" (xix. 337). Stoning was apparently resorted to when the artistic feelings of the people were violated in the theatre (Athen. vi. 245 D.) Cf. Athen. ix. 406-7. But the stoning in this case was not fatal and it merely represents in a vivid fashion the reaction of the Athenian audience to the plays they observed. According to one account Phidias was in danger of being stoned because his picture of Athena did not meet with the approval of the people (Tzetzes Chil. 8. 365).

can hardly draw from it the conclusion that it was a legal means of execution in the days of Aeschylus. A divulgence of some secret cult or a similar act of impiety might easily have roused the indignation of the religious folk to such an extent as to incite them to throw stones at the sacrilegious person. The very fact that it is reported to have occurred in the theatre shows that it was not done after due judicial deliberation.

In Aristophanes' Acharnians<sup>1</sup> Dicaeopolis, an honest citizen finding it impossible to get the state to conclude a peace with Sparta, makes a private truce on his own account. The people of Acharnae would stone him but are finally induced by him to desist. Hirzel<sup>2</sup> sees here a case of capital punishment (Tötung), but it can hardly be considered one under the circumstances. To begin with, the language throughout is tragic, probably parodied largely from Euripides, hence the tragic motif of death by stoning.<sup>3</sup> The chorus, furthermore, consists of old men from Acharnae, a district which had particularly suffered from the Spartan invasions. These men may very well be represented as taking the law into their own hands. The familiar cry of an indignant mob was, "Stone him!" When the best citizens, indignant at the barbaric treatment that was to be inflicted on Phocion, proposed that the slaves and foreigners should leave the assembly, the multitude cried out "to stone the oligarchs and haters of the people."<sup>4</sup> All the cases cited have shown the impulse to punish conduct which provoked the passion of the people as a whole. In all these instances it is blind rage which stirs the crowd to resort to the first weapon at hand.

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<sup>1</sup>281 ff.; 319 ff.

<sup>2</sup>Op. cit., p. 243.

<sup>3</sup>Cf. W. Starkie, The Acharnians of Aristophanes 295 n.

<sup>4</sup>Plut. Phocion xxxiv.

Orators upheld this lawless punishment when it suited their political or rhetorical purposes to do so. In his famous invective against Leocrates, Lycurgus<sup>1</sup> says that if the defendant had lived in the days of the Persian war and left the city in time of peril he would have been stoned in that spirit in which the Athenians barely refrained from stoning Alexander who had become an emissary of Xerxes. Demosthenes<sup>2</sup> in his denunciation of those who had injured the Phocians remarks: "Could your ancestors return to life what vote or judgment would they pass upon the authors of this destruction? In my opinion, though they stoned them with their own hands they would consider themselves pure." In his speech Against Timarchus Aeschines<sup>3</sup> considers liable to such a fate one who disgraced the honor of the people through disreputable living. "Thereupon will not the man be stoned who has hired an Athenian contrary to the laws, and will he not leave the courtroom not only sentenced to pay his fine but also convicted of wanton outrage?" This vehement invective does not mean that stoning was still in practice, and that it would be resorted to at this time. Furthermore, a man convicted of being addicted to personal vices suffered a certain curtailment of civic rights such as exclusion from the Athenian assembly,<sup>4</sup> but not capital punishment. The use of the word stoning here is hardly more than a manner of speech which may find its parallel in such a contemporary phrase as "hanging is too good for him" made by a prosecutor in the heat of the prosecution.

That stoning was not legal in the historical period is attested by various statements in the sources. A religious curse seems at times to have rested upon those states and persons who were responsible for such lawlessness. The wives of the citizens

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<sup>1</sup>Con. Leoc. 71. <sup>2</sup>xix. 66. <sup>3</sup>163. <sup>4</sup>Cf. Ibid. 28f.



of Caphyae who had stoned the children of Condylea were punished, Pausanias informs us, by a succession of still-births.<sup>1</sup> Of the people of Agylla who were guilty of stoning the Phocians, Herodotus says, "But after this [the stoning] all from Agylla, whether sheep or beasts of burden or men, that passed the place where the stoned Phocians lay became distorted and crippled and palsied."<sup>2</sup> In Lucian's Fisherman<sup>3</sup> Socrates is represented as saying to Plato that it would be better not to stone Lucian in order that the enemies might not say that they had slain a man without trial. The Greek magistrates in Apuleius<sup>4</sup> exhort the populace not to substitute the lawlessness of stoning for other legal punishments.

Since stoning was a community affair, only crimes that affected the general welfare and community interests were punished in this way. Paris deserved stoning, according to Hector, because he had exposed his people to reprisals on the part of the Greeks. He had thus committed an offense against the entire community.<sup>5</sup> In Ithaca, Eupheithes, for an act which threatened his people with reprisals, came near being the victim of such punishment at the hands of the populace.<sup>6</sup> A similar fate threatened Ajax and his followers because of the wholesale slaughter the hero perpetrated upon the cattle which was the army's (i.e. the community's) booty.<sup>7</sup> Most crimes affecting the existence and welfare of a state or community may possibly be classified as treason. Palamedes was stoned on the pretended charge of treacherous communication with the Trojans. The Arcadians stoned Aristocrates for betraying their interests and those of the allied Messenians to

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<sup>1</sup>lvi. 23. 6-7. <sup>2</sup>i. 167. <sup>3</sup>x; cf. i. <sup>4</sup>Metam. x. 6.

<sup>5</sup>Il. iii. 56 ff.

<sup>6</sup>Od. xvi. 420f.

<sup>7</sup>Soph. Ajax 254 ff.

<sup>8</sup>Scholiast on Eurip. Orestes 432; Philostr. Heroicus 311.

Sparta.<sup>1</sup> During the Peloponnesian war Thrasyllus was on the verge of being stoned by the army because he had made a truce with the Lacedaemonian Agis without consulting the people.<sup>2</sup>

Murder was punished by stoning only when it affected the entire community, such as the murder of a king. Thus the chorus predicts this punishment for Aegisthus as the murderer of Agamemnon.<sup>3</sup> The Achaeans stoned the Messenian captives in revenge for Philopoemen's death.<sup>4</sup> Helen was threatened with stoning as the cause of the death of the warriors at Troy.<sup>5</sup> The murderers of the Boeotian Phocus, whose death according to Plutarch's narrative became the general concern of all the Boeotians, were stoned.<sup>6</sup> Parricide was punished in this manner. Orestes and Electra were to be stoned for the murder of Clytaemnestra on the resolution of the Argives.<sup>7</sup> Oedipus vainly wished to die by stoning on the day he discovered that he was guilty of parricide and incest.<sup>8</sup> Plato, speaking of a man who of his free will killed father, mother, brother, and children, says:

And if any man be convicted of such a murder, and of having slain any of the persons named, the officers of the judges and the magistrates shall kill him and cast him out naked at an appointed cross-roads outside the city; and all the magistrates acting on behalf of the whole state shall take each a stone and cast it on the head of the corpse, and thus make atonement for the whole state; and after this they shall carry the corpse to the borders of the land and cast it unburied according to law.<sup>9</sup>

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<sup>1</sup>Paus. iv. 22. 7.

<sup>2</sup>Thuc. v. 60; cf. Diod. Sic. xiii. 87. 5; xiii. 92. 1; Plato Epist. vii. 354 D ff. for similar instances of stoning.

<sup>3</sup>Aeschylus Agamemnon 1615.

<sup>4</sup>Plut. Philop. xxi.

<sup>5</sup>Eurip. Troades 1036 ff.

<sup>6</sup>Plut. Amat. Narr. iv. 774 E ff.

<sup>7</sup>Eurip. Orestes 46-52.

<sup>8</sup>Soph. O. C. 431 f. The Lusitanians regularly punished parricide by stoning, says Strabo (iii. 3. 7).

<sup>9</sup>Laws 873 B.

In general the homicide laws were the least subject to change and Solon in revising the code of laws retained that portion of the Draconian code which dealt with homicide. It is significant that Plato should add stoning as a symbolic punishment in the case cited above. It seems to point to the antiquity of this form of execution and to the time when it was a recognized legal form of punishment.

By committing impiety or sacrilege a person would rouse the wrath of some deity who might become hostile to the community. The Locrian Ajax was in danger of stoning at the hands of the Greeks for his affront to Athena.<sup>1</sup> Creusa was to suffer a similar fate because of her impious plan to kill Apollo's priest.<sup>2</sup> The citizens of Caphyae stoned the children who in their play tried to strangle the statue of Artemis in her temple.<sup>3</sup> The stoning of Artayctes' son took place as a result of the father's desecration of the sanctuary of Protesilaos.<sup>4</sup>

Prisoners of war were sometimes stoned either as dangerous to the state or in revenge.<sup>5</sup> The Phocian pirates were executed in this way doubtless as enemies of the state.<sup>6</sup> The Messenian captives were stoned to death by the Achaeans at Philopoemen's tomb in revenge for his death.<sup>7</sup> The captive Hecuba, according to one tradition, died by stoning, "the death of mad dogs," as Tzetzes remarks.<sup>8</sup>

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<sup>1</sup>Kinkel, Frag. Ep. I, 49.

<sup>2</sup>Eurip. Ion 1222 ff.; cf. Paus. viii. 5. 12.

<sup>3</sup>Paus. viii. 23. 6-7.      <sup>4</sup>Herod. ix. 116.

<sup>5</sup>A. S. Pease, "Stoning among the Greeks and Romans," Transactions of the American Philological Association, XXXVIII (1907), 9.

<sup>6</sup>Herod. i. 167.

<sup>7</sup>Plut. Philop. xxi.

<sup>8</sup>Chil. iii. 246 f.; cf. Ausonius Epitaphia Heroum xxv.

There seems to be no doubt that when stoning was a legal form of punishment there was a definite place for its execution, most likely outside of the city. Thucydides<sup>1</sup> relates that the Argives on their return began to stone Thrasyllus in the bed of the Charadrus, where, before they entered the city, all cases were tried that arose from an expedition. The Phocian captives were led outside of the city and stoned. Plato specifies that the stoning of the corpse of a homicide shall take place "at an appointed cross-roads outside of the city."<sup>2</sup> Hirzel<sup>3</sup> seems to be of the opinion that stoning outside of the city was only natural and necessary when thereby the opportunity to escape was granted to the criminal. He adds that stoning really represented banishment (Ausstossung). The fact that stoning took place outside of the city does not imply, however, that it was done with the view to allow the victim a chance to escape. In fact, from the few examples that do specify the location of the place of execution the contrary may be deduced. The Phocian pirates were certainly not given the slightest chance to escape. Thrasyllus was led to a definite place near the city. He escaped only by fleeing for refuge to an altar, otherwise escape would be impossible. The reason for carrying out this punishment outside the city may be found in the very nature of the punishment. One would expect a community to stone criminals outside the city and not in the city proper where the stones, if they missed their mark, would cause undue damage to the innocent. But during the historical period when stoning was no longer legal it took place wherever the impassioned mob decided to resort to it. Cylon's adherents were stoned in the heart of Athens.<sup>4</sup> Lycidas suffered the same

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<sup>1</sup>v. 60.

<sup>2</sup>Laws 873 B.

<sup>3</sup>Op. cit., p. 245.

<sup>4</sup>Plut. Solon xii.



fate in front of the house at Salamis.<sup>1</sup> The Thessalian women, jealous of her beauty, enticed Lais into a temple of Aphrodite and there stoned her to death.<sup>2</sup>

On the basis of the evidence in the sources it is clear that stoning was legal in the heroic period. Though occasionally resorted to by an enraged mob, it was not a legal form of capital punishment in later times in Athens. Stoning was used in cases of impiety, treason, and in general for all crimes that affected the well-being and security of the community as a whole.

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<sup>1</sup>Herod. ix. 5.

<sup>2</sup>Paus. ii. 2. 5; cf. Plut. Amator. xxi. 768 A.

## CHAPTER IV

### BARATHRON

Precipitation from a high rock as a means of execution was practiced among a great number of peoples from very early times. Euripides<sup>1</sup> attributes this practice to the indigenes of Tauris and Pliny<sup>2</sup> ascribes it to the Hyperboreans. Strabo says of the Lusitanians, "Those who are condemned to death they hurl from precipices."<sup>3</sup> Time and again we find in the legends reference to persons who were precipitated from the height of a rock. In the Troades Talthybius brings the evil tidings to Andromache that Astyanax "must be hurled from the battlements of Troy."<sup>4</sup> It was a law of Elis to cast from Mount Typaeum any women who were caught present at the Olympic games or even on the other side of the Alpheus on days prohibited to women.<sup>5</sup> In legendary times the Spartans precipitated Aristomenes and his companions into the Kaiadas.

The rest of the Messenians were killed at once as they fell, but Aristomenes and his companions now as on other occasions were preserved by one of the gods. His panegyrics say that when Aristomenes was thrown into the Ceadas an eagle flew below him and supported him with its wings, bringing him to the bottom without any damage to his body and without wound. Even from here, as it seems, it was the will of heaven to show him a means of escape.<sup>6</sup>

These early instances seem to point to the religious origin of precipitation as a mode of punishment. This may have resulted from the general practice of performing religious rites on high places. In all of Greece this means of punishment had in early

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<sup>1</sup>Iph. Taur. 1429.

<sup>2</sup>Nat. Hist. iv. 26. 12.

<sup>3</sup>iii. 3. 7.

<sup>4</sup>Eurip. Troades 725.

<sup>5</sup>Paus. v. 6. 7.

<sup>6</sup>Paus. iv. 18. 4.

times born the character of divine judgment.<sup>1</sup> The legend of Aristomenes has preserved the memory of a time when the Spartans, having thrown the criminals alive into the Kaiadas, left them a vague hope of miraculous escape. It is very likely that the Athenians, too, originally saw ordeal in execution by precipitation. Curtius<sup>2</sup> is of the opinion that at first criminals were thrown into the barathron alive and that this mode of execution bore the character of trial by ordeal. Casting from a height, then, appears to have been a common mode of execution in early ages. It was perhaps adopted to save the executioners from actually shedding the blood of their victims.<sup>3</sup>

Whereas in early times any elevation or pit would serve the purpose, in the historical period when penal law began to be more systematized the Athenians deemed it necessary to specify a definite place for execution. The earliest historical reference to barathron is found in Herodotus<sup>4</sup> who relates how the Athenians had thrown the messengers of Darius into it. In the sources it is briefly admitted that at Athens certain criminals condemned to death were thrown into this excavation just as at Rome they were thrown from the Tarpeian rock and that constituted their punishment. Scholars seem to disagree about the exact location of the barathron and the exact mode of punishment. But this disagreement may be due to the fact that they have failed to make a distinction between the barathron and the orygma (ὄρυγμα).

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<sup>1</sup>G. Glotz, L'Ordalie dans la Grèce Primitive, (Paris, 1904), p. 92.

<sup>2</sup>E. Curtius, "Attische Studien," Abhandl. der Göttinger Ges. der Wissench., XI (1862-3), 59.

<sup>3</sup>Cf. W. R. Smith, Lectures on the Religion of the Semites, (London, 1914), pp. 417 ff.

<sup>4</sup>vii. 133.

Until the end of the fifth century we have references to the barathron. The authors of the fourth century, however, speak of an excavation known as orygmā. Herodotus,<sup>1</sup> Xenophon,<sup>2</sup> Aristophanes,<sup>3</sup> Plato,<sup>4</sup> and Plutarch<sup>5</sup> who speak of events that antedate the fourth century make use of the term barathron. But Lycurgus<sup>6</sup> and Dinarchus<sup>7</sup> refer to the orygmā. Thucydides<sup>8</sup> uses the phrase ἐς φάραγγα. Thalheim suggests that the historian may have used this phrase out of consideration for non-Athenian readers (im Rücksicht auf nicht Athenische Leser).<sup>9</sup> But we should expect the article with φάραγγα if it referred to the pit in question. It is likely that it was a different pit altogether since the entire procedure in Thucydides is that of vengeance and reprisal rather than punishment for a definite crime.

The fertile imaginations of the scholiasts on Aristophanes' Plutus<sup>10</sup> and the lexicographers<sup>11</sup> conceived the barathron as a dismal pit in the sides of which spikes were fixed at various points which tore to pieces those who were thrown into it alive. According to Bekker<sup>12</sup> the barathron was located in the deme Kairiadae. In Plato's day it was situated on the way from the Peiraeus to the city. In the Republic<sup>13</sup> there is the account:

<sup>1</sup>vii. 133.                      <sup>2</sup>Hell. i. 7. 20.

<sup>3</sup>Knights 1362; Clouds 1450; Frogs 574; Plutus 431.

<sup>4</sup>Gorgias 516 E.    <sup>5</sup>Aristides iii.

<sup>6</sup>Con. Leoc. 121.                      <sup>7</sup>i. 62 .

<sup>8</sup>ii. 67. 4. See infra for details of the incident.

<sup>9</sup>S.v. "Barathron" in Pauly-Wissowa.

<sup>10</sup>431. Χάσμα τι φρεατῶδες καὶ σκοτεινὸν ἐν τῇ Ἀττικῇ - ἐν δὲ τῷ Χάσματι τούτῳ ὑπῆρχον ὀγκύναι, οἳ μὲν ἄνω, οἳ δὲ κάτω.

<sup>11</sup>Pollux, Suidas, Photion, Hesychius, Harpocration, s.v. barathron.

<sup>12</sup>Anecdota Graeca i. 219.

<sup>13</sup>iv. 439 E.



. . . That Leontius, the son of Aglaion, on his way up from the Peiraeus on the outer side of the Northern wall, becoming aware of dead bodies that lay at the place of public execution, at the same time felt a desire to see them and a repugnance and aversion.

There also lay the deme of Miletus, and the same place is obviously meant in Plutarch. Speaking of the temple of Artemis that Themistocles had erected, Plutarch says, "This temple he established near his house in Milete where now the public officers cast out the bodies of those who have been put to death."<sup>1</sup> Judeich,<sup>2</sup> who evidently makes no distinction between orygma and barathron, locates the barathron in the same vicinity. There seems to be definite evidence, however, to substantiate the theory that the orygma of the fourth century was different from the old barathron. Ross believes that the old barathron lay near the hill of the Areopagus:

Eine enge Nachbarschaft des Metroon mit dem Areios Pagos und dem Heiligthum der Semnä deuten auch die Erzählungen über das alte Barathron an. Dies Barathron welches neben dem genannten Heiligthume der Eumeniden und hart am Areios Pagos lag wurde später zugeschüttet und über ihm das Metroon erbaut. Die von der N. O. Ecke des Areios Pagos heruntergestürzten Felsblöcke mögen wohl einen Theil des Barathron bedecken.<sup>3</sup>

A passage in Euripides' Electra seems to lend force to this supposition. Castor, in his address to Orestes in which he informs him that he will be acquitted by the tribunal of the Areopagus, says:

Yet shall the Dread Ones, anguish-stricken for this,  
Hard by that hill sink into earth's deep cleft  
Revered by men . . . . (πάγον παρ' αὐτόν χόσμα δούσονται χθονός).<sup>4</sup>

The scholiast on Aristophanes' Plutus<sup>5</sup> informs us that the Athenians filled up the barathron in the fifth century as a result of

<sup>1</sup>Themistocles xxii.

<sup>2</sup>W. Judeich, Topographie von Athen (München, 1931), p.168.

<sup>3</sup>L. Ross, Das Theseion (Halle, 1852), p.44, n. 131.

<sup>4</sup>1270.

<sup>5</sup>431.

an outrage against the "Mother of the Gods." Suidas<sup>1</sup> is more explicit on this point. He says that the Athenians put to death a priest of Cybele, who on coming to Athens initiated the women into the rites of the Mother of the Gods, by casting him into the barathron. When a famine resulted they were bidden by the oracle to expiate the murder. They filled up the pit, then, and erected on the spot the Bouleuterion and the Metroon. Although according to Wilamowitz<sup>2</sup> the legend about the Metroon is a probable invention of Julian, the fact remains that the cult of Cybele was introduced into Greece in the fifth century. It did not gain full recognition, probably, until the end of the fifth century.<sup>3</sup> It is precisely then that the practice of throwing criminals alive into the barathron and the very mention of the word barathron came to an end. The orators of the fourth century call the pit in question orygmā.<sup>4</sup> Hager considers this use of the word a euphemism.<sup>5</sup> He sees in it the same tendency at work which made Plato use the phrase ὁ μέλλων σοι δώσειν τὸ φάρμακον to avoid the repulsive term δῆμιος, and speak of φάρμακον instead of κώνειον.<sup>6</sup> While it is an admitted fact that Plato, in his account of his master's death, tended to avoid unpleasant diction, we should

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<sup>1</sup>S.v. μητραγύρτης.

<sup>2</sup>Ulrich von Wilamowitz, "Die Galliamben des Kallimachos und Catullus," Hermes, XIV (1879), 195, n. 3.

<sup>3</sup>F. Schwenn, "Kybele," in Pauly-Wissowa. "415 sah Athen die erste Entmannung in dem Formen des Gallenritus. Aus dem 4 Yhdt. ist im Peiraeus der Kult der Orgeonem nachweisbar." Cf. F. Foucart, Des Associations Religieuses chez les Grecs (Paris, 1873), p. 65.

<sup>4</sup>Lycurgus Con. Leoc. 121; Din. Con. Dem. 62; cf. Pollux viii. 71.

<sup>5</sup>H. Hager, "How Were the Bodies of Criminals at Athens Disposed of after Death?" Journal of Philology, VIII (1879), 11.

<sup>6</sup>Phaedo 63 D; cf. Plut. Solon xv for use of οἴκημα in place of prison.

hardly expect Lysurgus and Dinarchus to indulge in undue euphemisms when referring to specific instances in court. Orators and Athenian orators particularly were known for their practice of using the strongest language possible when speaking before the jury. Certainly if barathron or the practice of throwing into the barathron were in existence they would make reference to it by the technical word known to all. Thonissen<sup>1</sup> as well as Ross<sup>2</sup> believe that the *orygma* was different from the barathron. Gernet expresses a similar opinion: "Nous admettrions à la rigueur que le nouvel *orygma*, celui du IV<sup>e</sup> siècle, distinct de l'ancien, celui du V<sup>e</sup>, ne servait plus que de lieu de dépôt pour les cadavres des condamnés."<sup>3</sup> The references in the writers of the fourth century seem to point, then, to a new excavation, the *orygma*, which was different from the older pit, the barathron. The use of *vōv* in Plutarch's account indicates likewise a change of location.

There seems to be a divided opinion among scholars as to whether or not criminals were thrown into the barathron alive. Thonissen<sup>4</sup> takes the negative view. "Contrairement à l'opinion généralement reçue, nous ne pensons pas qu'il faille ajouter à la liste des supplices athéniens le cruel usage de jeter le condamné vivant dans un gouffre." Keramopoulos,<sup>5</sup> in his attempt to give sole prominence to *apotympanismos*, does not consider precipitation into the barathron as a mode of execution, and admits that the barathron served merely as a depository for the corpses of crimi-

<sup>1</sup>Op. cit., p. 97.

<sup>2</sup>Op. cit., p. 44, n. 131.

<sup>3</sup>L. Gernet, "Sur L'Exécution Capitale," Rev. d. Études Grecques, XXXVII-XXXVIII (1924-5), 269, n. 1.

<sup>4</sup>Op. cit., p. 94.

<sup>5</sup>M. Keramopoulos, Ὁ ἀποτυμpanισμός Συμβολή ἀρχαιο-λογική εἰς τὴν ἱστορίαν τοῦ ποινικοῦ δικαίου καὶ τὴν λαογραφίαν (Βιβλιοθήκη τῆς ἐν Ἀθῆναις ἀρχαιολογικῆς ἐταιρείας) Ἐν Ἀθῆναις 1923. pp. 36 ff.

nals put to death by apotympanismos. But how can we explain, then, the various statements in the sources which make explicit reference to this means of punishment? Herodotus, speaking of the fact that Xerxes sent no messengers to Athens, says:

But to Athens and Sparta Xerxes sent no herald to demand earth, and this was the reason. When Darius had before sent men with this same purpose the demanders were cast at the one city into the barathron and at the other into a well and bidden to carry thence earth and water to the king.<sup>1</sup>

There can be no doubt, in this case, that the heralds were thrown into the barathron alive. Plato, speaking of Miltiades who in consequence of the unfortunate expedition against Paros was, on the prosecution of Xanthippus, declared guilty of deceiving the people, puts in the mouth of Socrates, "And Miltiades the hero of Marathon they sentenced to be flung into the barathron and had it not been for the Prytanis in he would have gone."<sup>2</sup> Plutarch, in his life of Aristides, states:

Finally there came a time when he [Aristides] opposed and defeated Themistocles in an attempt to carry some really necessary measure. Then he could no longer hold his peace, but declared, as he left the Assembly, that there was no safety for the Athenians unless they threw both Themistocles and himself into the barathron.<sup>3</sup>

Though it is possible that he may have said this in jest, there would be little point in the jest were the practice not in existence. In Aristophanes' Knights to the query of the Sausage-Seller:

If any scurvy advocate should say,  
Now, please remember justices, ye'll have  
No barley, if the prisoner gets off free,  
How would you treat that scurvy advocate?<sup>4</sup>

Demos replies:

<sup>1</sup>vii. 133.

<sup>2</sup>Gorgias 516 E.

<sup>3</sup>iii. εἰ μὴ καὶ Θεμιστοκλέα καὶ αὐτὸν εἰς τὸ βάραθρον ἐμβάλοιεν.

<sup>4</sup>1362, trans. Rogers. Cf. Clouds 1450; Frogs 574; Plutus 1109.



I'd tie Hyperbolus about his neck  
And hurl him into the Dead Men's pit (βάραθρον).

The threat ἐς τὸ βάραθρον ἐμβάλῳ is precise, for this was the punishment meted out ἐάν τις τὸν Ἀθηναίων δῆμον ἀδικῇ. How can we explain, furthermore, the statement that Xenophon puts in the mouth of Euryptolymus at the trial of the Generals? Quoting the famous decree of Cannonus he says:

You know, men of Athens, the exceeding stringency of the decree of Cannonus, which orders that man, whosoever he be, who is guilty of treason against the people of Athens to be put in irons and so to meet the charge against him before the people. If he be convicted, he is thrown into the barathron to perish (ἀποθανεῖν εἰς τὸ βάραθρον ἐμβληθέντα)<sup>1</sup>

The statement in Thucydides that the Athenians slew the Peloponnesian ambassadors to the court of Persia and threw them into a pit (ἐς φάραγγα) does not necessarily imply that at this time (430 B.C.) the Athenians ceased to throw criminals alive into the barathron. Thucydides adds that the Athenians executed them in this fashion,

. . . . thinking it justifiable to employ for their own protection the same measures as had in the first instance been used by the Lacedaemonians when they killed and cast into pits the traitors of the Athenians and their allies, whom they caught on board merchantmen on the coast of the Peloponnesus.<sup>2</sup>

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<sup>1</sup>Hell. i. 7. 20. Hager is inclined to follow the reading of the MSS. ἀποθανόντα εἰς τὸ βάραθρον ἐμβληθῆναι and therefore concludes that criminals were not thrown alive into the barathron at the time of the enactment of the decree of Cannonus which he dates after 415 B.C. (op. cit., p. 9). The date of this decree, incidentally, is probably not later than 489 B.C. and may be as early as 508-507 B.C. (Bonner and Smith, op. cit., p. 208). The scholiast on Aristophanes' Eccles. 1081 quotes the decree of Cannonus as follows: ξενοφῶν δὲ εἰς τὸ βάραθρον ἐμβληθέντα ἀποθανεῖν καὶ τὴν οὐσίαν ἀπολέσαντα.

Furthermore, there are other passages in the sources which substantiate the view that criminals were cast alive into the barathron until the latter part of the fifth century (Plato Gorgias 516 E; Plut. Arist. 3; Herod. vii. 133). The reading ἀποθανεῖν εἰς τὸ βάραθρον ἐμβληθέντα which is adopted in the Teubner and Oxford texts is obviously correct.

<sup>2</sup>ii. 67. 4.

To begin with, according to Thucydides the Spartans did not throw the Athenians into the Kaiadas for it is stated expressly that they cast them into pits (ἐς φάραγγας), and, furthermore, they had killed the Athenians beforehand. It is obviously in the spirit of reprisal that the Athenians inflicted similar treatment upon the Spartans. It is possible, moreover, as was previously suggested, that the phrase without the use of the article had no reference to barathron and that this case constituted an unprecedented mode of execution. In view of the foregoing evidence it is reasonable to conclude that from very early times until the end of the fifth century criminals were thrown into the barathron alive, and that that constituted their execution. Though we have no explicit statement about the exact date on which this mode of punishment ceased, the fact that no reference to the barathron is found after the trial of the Generals (406 B.C.) leads to the assumption that at this date or soon thereafter the practice of hurling criminals alive into the barathron was discontinued.<sup>1</sup> It was dead bodies that Leontius observed on the ground as he was walking up from the Peiraeus.<sup>2</sup> Plutarch locates the house of Themistocles near the spot "where now the public officers cast out the bodies of those who had been put to death." On the basis of these facts it is safe to assume that after the fifth century the barathron ceased to have its function as a form of capital punishment. But the criminals who had an additional penalty of ἀραπία added to their punishment were, in some cases, first put to death, probably by apotympanismos, and their bodies thrown into the orygma.

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<sup>1</sup>Cf. Gernet, op. cit., p. 269, n. 1.

<sup>2</sup>Plato Rep. 439 E.

CHAPTER V  
APOTYMPANISMOS

The sources have a number of references to a mode of execution known as apotympanismos (*ἀποτυμπανισμός*). The texts that are contemporary with the institution are not explicit, in fact they do little more than mention it. From Demosthenes,<sup>1</sup> Lysias<sup>2</sup> and Aristotle<sup>3</sup> we merely learn that it was a process employed for the execution of criminals. Until very recently scholars followed the traditional opinion that apotympanismos meant cudgelling to death. This view, based, no doubt, on the statements of the lexicographers, was expressed by Lipsius who rendered apotympanismos as "Tötung mit der Keule."<sup>4</sup> According to Photion and Hesychius, the word *τύμπανον* designates a kind of club with which the criminals condemned to death were executed, whence the term in question. Pollux,<sup>5</sup> however, informs us that the *τύμπανα* were planks on which the victims were cudgelled. With reference to *τὸ δὲ τύμπανον καὶ κύφωνες οὐκ ἀρήξετε* in Aristophanes' *Plutus* 476, *τύμπανον* is explained as *ξύλα ἐφ' οἷς ἐτυμπάνιζον*. Thalheim, evidently following the statement of Pollux, attempts to correct the traditional view held by Lipsius, and probably comes nearer the truth. According to him<sup>6</sup> *τύμπανον* is a "Maschine" to which

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<sup>1</sup>viii. 61; xix. 137.

<sup>2</sup>xiii. 56, 67, 68.

<sup>3</sup>*Ath. Pol.* xlv. 1; *Rhet.* ii. 5. 1382 B; 6. 1385 A.

<sup>4</sup>*Op. cit.*, p. 77, n. 101. For a similar view see Caillemer, "Apotympanismos" in Daremberg-Saglio.

<sup>5</sup>viii. 71.

<sup>6</sup>"Apotympanismos" in Pauly-Wissowa; cf. Thalheim, *Rechtsaltertümer*, p. 141, n. 5.

the criminal was bound in order to be executed by the blows of the cudgel. He says, "Die Hinrichtung aber vollzog sich nicht mit dem Schwert, da Enthauptung griechischer Sitte fremd gewesen zu sein scheint, sondern durch Schlag mit der Keule" and adduces as proof the statement in Plutarch's Pericles<sup>1</sup> ξύλοις τὰς κεφαλὰς συγ-κόψαντας. We know from Xenophon<sup>2</sup> and Polybius<sup>3</sup> that the Athenians considered it barbarous to make use of the sword in executions, and the reason, we have to assume, is that they loathed the sight of blood. As we view the changes in the modes of punishment employed by the Athenians, we can see that each change marked a step in the direction of minimizing the pain and the gruesomeness of executions. But would not the blows of the cudgel cause considerable bleeding, and would not death in this manner be even more gruesome than by the clean stroke of the sword? Plutarch, moreover, seems to deny the truth of Duris' statement which he quotes in his Pericles. Is it not likely that he bases his denial on the fact that Duris adds: ξύλοις τὰς κεφαλὰς συγ-κόψαντας, which was unusual in Athenian practice? He certainly cannot disbelieve the existence of apotympanismos as a form of capital punishment. Because of their familiarity with Roman practices, such writers as Athenaeus have confused apotympanismos with decapitation and have used the word τύμπανον to mean sword or axe.<sup>4</sup> Later scholars, also under the influence of Roman practice, have implied that τύμπανον was a club with which the

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<sup>1</sup>xxviii,

<sup>2</sup>Απ. ii. 6. 1.

<sup>3</sup>i. 7.

<sup>4</sup>Athenaeus quoting Euphorion states, "Among the Romans twenty pounds are offered to any who will brave decapitation with an axe (τὴν κεφαλὴν ἀποκοπῆναι πελέκει) on condition that their heirs receive the prize. And often when too many are enrolled they dispute which of them has the best right in each case to have his head cut off (ἀποτυμπανισθῆναι) (iv. 154 C).



criminal was beaten to death. On the basis of Plutarch's statement it seems logical to suppose that only on rare occasions did the Athenians add insult to injury and make use of a club, and that death by apotympanismos consisted of something different entirely. In this connection, it is significant to note that the word ξύλον and not τύμπανον is used in Plutarch to designate the word club.

On the basis of excavations undertaken on the site of ancient Phalerum in 1915,<sup>1</sup> Keramopoullos<sup>2</sup> proposes to view the matter differently. Among a group of graves discovered there was a common grave in which were found seventeen skeletons bearing iron collars about the neck and cramp irons about hand and foot. Certain observations lead to the conclusion that the dead had undergone punishment on planks before expiring. Some remnants of the wood still adhere to the cramp irons. It is obviously a form of capital punishment and as such can be identified, upon eliminating the various modes employed by the Athenians, only with apotympanismos. Keramopoullos applies himself to justifying this hypothesis, and points out the uses of the Latin tympanum which allow us to see in σάνις a possible synonym for τύμπανον. In Vergil's Georgics<sup>3</sup> we find tympana used in the sense of wheels of solid wood, and again in Vitruvius<sup>4</sup> we have the phrase tympana ostiorum meaning door panels. Similarly, Homer uses σάνιδες in the sense of folding doors.<sup>5</sup> Herodotus<sup>6</sup> speaking of the punishment inflicted by the Athenians upon the Persian Artayktes for his wantonness and impiety, says: ὤντα

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<sup>1</sup> Ἀρχαιολογ. Δελτίον (Athens, 1916), p. 13.

<sup>2</sup>Op. cit.

<sup>3</sup>ii. 444.

<sup>4</sup>iv. 6. 4.

<sup>5</sup>Il. xii. 453, 461; Od. xxii. 128 ff.

<sup>6</sup>vii. 33; ix. 120.

πρὸς σανίδα διεπασσάλευσαν. The story of this vengeance evidently made a deep impression upon Herodotus for otherwise he would not have introduced it here simply apropos of the topography of the Chersonese. The novelty, or the cruelty shall we say, of the punishment must have consisted of the fact that they crucified Artayktes, if we are to translate διεπασσάλευσαν that way. But must it necessarily mean that? The πάσσαλοι used in this case may have the same meaning as the ἥλος in Aristophanes' Thesmophoriazusae<sup>1</sup> where the term refers to a peg, which turned this way or that would tighten or relax the prisoner's bonds. It is very likely, then, that in this case, too, the πάσσαλοι were not driven into the body but served as pegs to bind the prisoner to the σανίς, which must be akin to the τύμπανον mentioned elsewhere. Another connection between τύμπανον and σανίς is found in Plutarch's Pericles.<sup>2</sup> Reporting the account of Duris, the Samian historian, he says that Pericles, after conquering Samos, brought the Samian trierarchs and marines into the market-place of Miletus. Here he tied them to planks (σάνισι προσδήσας), and having exposed them for ten days, had them beaten to death with clubs and their bodies finally cast forth without burial rites. Plutarch adds, however, that Duris does not seem to speak the truth, and that he has given a dreadful portrayal of the calamities of his country in order to calumniate the Athenians. But in spite of Plutarch's doubts we can hardly believe this account to be entirely a fabrication of Duris.

In the Thesmophoriazusae<sup>3</sup> we find a striking parallel to apotympanismos. When Mnesilochus, the confederate of Euripides, is discovered by the women at their festival, the Prytanis who arrives at the scene orders the Scythian archer to tie him to the

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<sup>1</sup>1001 ff.

<sup>2</sup>xxviii.

<sup>3</sup>930-946.

plank, saying: *οἷσον αὐτὸν εἰσάγων ὦ τοξότ' ἐν τῇ σανίδι*. We learn further something of the instrument. Mnesilochus, chained to the plank,<sup>1</sup> asks the Scythian to relax his bonds, saying: *χάλασον τὸν ἦλον*.<sup>2</sup> The ἦλος certainly cannot be a nail in this case, nor anything else driven into the body. It evidently was a peg which, as it was turned one way or the other, would tighten or relax the chains or cramp irons. Mnesilochus also complains of the *λαιμό-τμητ' ἄχη*<sup>3</sup> or "throat-cutting agonies" which must refer to some device about his neck and can very well be identified with the cramp iron. Speaking to the Prytanis, Mnesilochus says:

. . . . Don't expose me thus,  
Do tell the Scythian he may strip me first,  
Don't let a poor old man in silks and snoods,  
Provoke the laughter of the crows that eat him.<sup>4</sup>

From this we can deduce a contrario that the victim was ordinarily stripped before execution since the case of Mnesilochus exposed in all his feminine attire seems exceptional. After being stripped, the condemned was fastened by means of five cramp irons<sup>5</sup> to a plank erected on the ground.<sup>6</sup> After the cramp irons were fixed about the victim's neck, hands, and feet the executioner tightened the irons by means of a certain ἦλος<sup>7</sup> until the criminal expired. One can imagine the agony undergone when the suffering was prolonged for several days. But the only case of undue

<sup>1</sup>1012.    <sup>2</sup>1001 ff.    <sup>3</sup>1054.    <sup>4</sup>940 ff. trans. Rogers.

<sup>5</sup>In *Knights* 1049 Aristophanes mentions the *πεντεσῦριγγον ζύλον*, a wooden machine which had five apertures through which the head, hands, and feet of the culprit were inserted as we learn from the scholiast: *πεντεσῦριγγω πέντε ὁπὰς ἔχοντι δι' ὧν αἰτε πόδες καὶ αἱ χεῖρες, καὶ ὁ τράχηλος ἐνεβάλλετο*. Cf. Pollux viii. 72. In *Aris. Rhet.* iii. 10 1411 A, Polyeuctus, the Athenian orator and contemporary of Demosthenes, speaks of a paralytic as one who was *ἐν πεντεσῦριγγω νόσῳ δεδεμένος*. The five holes correspond to the five cramp irons which encircled the neck, hands, and feet.

<sup>6</sup>For the position of the victim cf. Herod. ix. 120; Plut. *Pericles* xxviii; In Ar. *Thesmoph.* 1028, 1053, 1110 note the word *κρεμάζειν* applied to the victim.

<sup>7</sup>Ar. *Thesmoph.* 1003.

extension of the punishment that we know of is that of the Samians who remained on the τύμπανον for ten days.<sup>1</sup> While the culprit was on the plank, no one was allowed to come near him or to bring him any relief whatsoever. During the entire scene in the Thesmophoriazusae the Scythian archer keeps guard over Mnesilochus and the Prytanis enjoins him not to allow anyone to approach, saying, καὶ προσιέναι μηδένα ἔα πρὸς αὐτόν.<sup>2</sup> Thus someone watched to see that death would follow.

A sentence of death by apotympanismos was most likely not carried out in the prison but outside of the prison, and probably near the home of the executioner. From the name Χαρώνειος <sup>3</sup> applied to one door of the prison it is evident that criminals must in some cases have been led out to execution by that door. And no mode of punishment is so likely from its very nature to have been carried out without the prison walls as apotympanismos. Thus we may understand also why according to Bekker<sup>4</sup> the dwelling places of the δῆμοι might be called ἀνδροκτονεῖα.

In spite of the frequent references to the cro /s in Aristophanes,<sup>5</sup> we can hardly assume that the bodies of the ἀποτυμpanισμένοι were always left as prey. We do know that prohibition of burial on Attic soil was a special penalty added in a number of cases of capital punishment, and was generally applicable to traitors, tyrants, and perpetrators of sacrilege.<sup>6</sup> In this respect, too, we see that Aristophanes gives a true account of Athenian

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<sup>1</sup>Plut. Pericles xxviii.

<sup>2</sup>Ar. Thesmoph. 932 ff.

<sup>3</sup>Pollux viii. 102; cf. Suidas, Hesychius, s.v.

<sup>4</sup>A. E. Bekker, Anecdota Graeca (Berlin, 1821), p. 28, 10; cf. Hager, op. cit., p. 6.

<sup>5</sup>Thesmoph. 868, τί οὖν ἐπὶ τῷ τῶν κοράκων πονηρία;  
Cf. 942, 1028 ff.

<sup>6</sup>Diod. xvi. 25, 2; Xen. Hell. i. 7, 22; Plato Laws 855 A.



penal law. Mnesilochus, who had committed sacrilege by desecrating the sacred festival of the women with his presence, would, of course, suffer the fate of all such criminals and be denied burial. Prohibition of burial, however, is not concomitant with apotypanismos. It all depended upon the nature of the crime committed, for we see that the bodies of the victims at Phalerum were buried, though, no doubt, without any customary rites.

Gernet<sup>1</sup> seems to believe that apotypanismos was analogous to crucifixion. In the latter, however, the hands and feet of the victim were nailed and this, of course, would entail an effusion of blood. But, as has previously been pointed out, the Athenians had an aversion to the sight of blood. Probably with the sole exception of Oedipus who appears on the stage with bleeding eyes there is no other case of bloodshed on the Athenian stage. And even in this case the messenger tells of the tragic punishment the king inflicted upon himself, and Oedipus appears only after the act was already accomplished.<sup>2</sup> Hence the constant resort to the ἄγγελος by the Athenian tragedians as the harbinger of evil tidings.

The earliest reference to apotypanismos we find in Herodotus<sup>3</sup> who, while describing the topography of the Chersonese makes a special point of telling the method by which the Athenians executed Artayktes, the Persian. This incident, Herodotus informs us, took place not long after (χρόνῳ ὕστερον οὐ πολλῷ) Xerxes' men bridged the Hellespont in 481 B.C. If it was not the cruelty of the procedure which drew the attention of Herodotus, as has been pointed out, then it seems logical to conclude that

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<sup>1</sup>Gernet et Bizos, Lysias xiii. 56.

<sup>2</sup>Soph. Oedipus Tyrannus 1267 ff.

<sup>3</sup>vii. 33.

he was impressed by the novelty of the procedure, and that apotympanismos as a form of capital punishment was introduced not long before this date. Keramopoullos<sup>1</sup> credits Draco with the introduction of this form of punishment. But we know that barathron was a more primitive and certainly a more cruel form of execution than apotympanismos, and therefore it seems more likely to credit Draco with the introduction of barathron. References to barathron begin earlier than do references to apotympanismos.<sup>2</sup> We know, furthermore, that barathron as a form of punishment was discontinued in the last part of the fifth century B.C. The practice of casting into the barathron is not mentioned after the trial of the Generals in 406 B.C., whereas apotympanismos continued to be employed even after hemlock had already been introduced.<sup>3</sup> And since barathron was discontinued earlier it is safe to assume that it was the older of the two forms of punishment.

The question that presents itself next is whether this form of punishment was confined to a certain class of criminals or whether it was used indiscriminately. M. G. Perrot<sup>4</sup> thinks that this mode of execution was limited to slaves and foreigners, a view which is inconsistent with the statement we find in Lysias<sup>5</sup> who speaks of Menestratus, an Athenian citizen, as having been executed by apotympanismos. Gernet<sup>6</sup> believes that there was a relation between ἀπαγωγή and apotympanismos, and that this mode of punishment was employed in the cases of malefactors (κακούργοι)

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<sup>1</sup>Op. cit., pp. 106 ff.

<sup>2</sup>Herod. vii. 133.

<sup>3</sup>Athenaeus relates that Athenion, the inglorious tyrant of Athens for a few weeks (88 B.C.), punished by apotympanismos any Athenian caught travelling to a refuge beyond the borders (v. 214 D).

<sup>4</sup>S.v. "Apotympanismos" in Daremberg-Saglio

<sup>5</sup>xiii. 56.

<sup>6</sup>Op. cit., p. 279.

when caught ἐπ' αὐτοφώρῳ . Upon a careful examination of the evidence we find that this application is somewhat limited. Demosthenes, speaking of Philip's hirelings says, "These men who have sold themselves to Philip you must execrate and execute by apotypanismos."<sup>1</sup> Then, again, in the De Falsa Legatione the orator remarks, "Now if he [Philip] had heard that the persons that talked like that to him had been executed by apotypanismos he would have done what the king of Persia did."<sup>2</sup> It is true that Demosthenes does not state that the men he speaks of were actually subjected to apotypanismos, but that they should have been. He would, however, hardly invoke a punishment to which they would not be liable. That traitors were dispatched in this way we learn also from Lysias<sup>3</sup> who states that one of the brothers of Agoratus was executed by apotypanismos when he was caught making treasonable signals to the enemy. It is true that he was caught in the act, but as a traitor and not as a κακούργος. In the same speech Lysias, speaking of Menestratus who had caused the death of some Athenians by denouncing them before the Thirty, reminds the jury:

You long afterward had him before you in court as an actual murderer (ὡς ἀνδροφόνον ὄντα ) and justly condemned him to death. You handed him over to the executioner and he suffered death by apotypanismos.<sup>4</sup>

Though we can hardly conclude that he was condemned as an actual murderer,<sup>5</sup> he does not fall into the category of κακούργοι. Aristotle in his Constitution of Athens speaks of Lysimachus who was indicted before the Council and was on the verge of being

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<sup>1</sup>viii. 61.

<sup>2</sup>xix. 137; cf. ix. 61.

<sup>3</sup>xiii. 67.

<sup>4</sup>xiii. 56.

<sup>5</sup>There is a political implication in this case. The guilt of treason was added to that of murder. Cf. H. J. Treiston, A Study in Ancient Greek Blood-Vengeance (London, 1923), p. 231.

subjected to apotympniamos.<sup>1</sup> We do not know the exact nature of his crime but since he was arraigned before the Council the offense must have been directed against the state. The cases referred to in Plutarch and Herodotus deal with public enemies. The execution of Antiphon the poet, mentioned by Aristotle,<sup>2</sup> was the deed of a tyrant. As for the victims of Phalerum, Kera-mopoullos<sup>3</sup> believes that they were pirates, but we have no evidence to substantiate this hypothesis. In Lysias we learn also that another brother of Agoratus was executed as a clothes-stealer (λωποδύτης). To quote Lysias, "The third was arrested here by Phaenippides as a clothes-stealer, and you tried him in your court; you condemned him to death and consigned him to execution by apotympniamos."<sup>4</sup>

To sum up, apotympniamos was a means of execution employed against citizens as well as against slaves and foreigners, and, as we can see from the examples cited, was not limited to malefactors (κακοῦργοι) but extended to traitors and other criminals.

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<sup>1</sup>Aris. Ath. Pol. xlv. 1.

<sup>2</sup>Rhet. ii. 6. 1385 A.

<sup>3</sup>Op. cit., pp. 42 ff.

<sup>4</sup>xiii. 63.



## CHAPTER VI

### HEMLOCK

The use of hemlock (κῶνειον) marked the last and most humane phase of capital punishment in Athens. The sources describe at some length the nature of the plant and the method of preparing the poison.<sup>1</sup> It was in the seed that the noxious element especially resided.<sup>2</sup> The poisonous juice issued upon pounding the venomous parts in the form of a milky liquid which coagulated in the sun.<sup>3</sup> The most reputed kinds of hemlock came from Cilicia, Chios<sup>4</sup> Asia Minor, Crete, Megarid, and Attica.<sup>5</sup> The hemlock that grew in Attica was very virulent but rare.<sup>6</sup> The largest quantities were produced in Laconia from its πολυφάρμακος soil.<sup>7</sup> The naturalists and doctors of antiquity studied with care the various properties of hemlock and entertained many popular presumptions on the subject.<sup>8</sup> It was frequently used as a therapeutic, particularly for external applications. For internal use, however, Hippocrates and Galen prescribed hemlock in very rare cases and recommended the greatest precaution.<sup>9</sup> It

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<sup>1</sup>Theophrastus Historia Plantarum i. 5. 3; vii. 6. 4; Dioscorides De Materia Medica v. 79; Pliny Nat. Hist. xxv. 95.

<sup>2</sup>Theophr. Hist. Plant. ix. 8. 3.

<sup>3</sup>Pliny Nat. Hist. xxv. 95.

<sup>4</sup>Dioscor. loc. cit.

<sup>5</sup>Pliny Nat. Hist. xxv. 95.

<sup>6</sup>Plutarch Dio lviii.

<sup>7</sup>Theophr. Hist. Plant. ix. 15. 8.

<sup>8</sup>Aelian De Nat. Anim. iii. 7; iv. 23; Lucretius De Rerum Natura 899-900.

<sup>9</sup>Hippocrates De Natura Muliebri xxix. 71; Galen De Acutorum Victu iv. 105.

passed as a cure for numerous ills from inflammation of the eyes to gout.<sup>1</sup> As a result of the refrigerative quality attributed to hemlock it was employed as an anaphrodisiac.<sup>2</sup> But it was as a deadly poison that κώνειον was chiefly known. The hemlock juice was prepared by pounding the seeds in a mortar.<sup>3</sup> This method was employed in the preparation of the poison which was administered at Athens to convicts sentenced to death.<sup>4</sup> To ensure death one had to drink of that preparation an amount to the value of twelve drachmas.<sup>5</sup> Only the quantity necessary for the occasion was prepared,<sup>6</sup> for it was said that when exposed to strong heat hemlock lost its efficacy.<sup>7</sup> Toward the end of the fourth century by a new method of preparation a refined and more active product was obtained. The seed was pared, the kernel was extricated from the tegument, pounded and sifted finely with a little water.<sup>8</sup>

The sources go into greater detail about the physiological action of hemlock. Pliny speaks of the vis refrigeratoria of cicuta, and it is generally agreed that κώνειον caused death by refrigeration.<sup>9</sup> The poison was effective only when the patient had a normal temperature and was not overheated. This

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<sup>1</sup>Pliny Nat. Hist. xxv. 64, 95.

<sup>2</sup>Pliny Nat. Hist. xxv. 95 3.

<sup>3</sup>Pliny loc. cit.; Theophr. Hist. Plant. ix. 16. 8-9.

<sup>4</sup>Ar. Frogs 124; Plato Phaedo 116 D, 117 A-B; Plut. Phocion xxxvi.

<sup>5</sup>Plut. loc. cit.

<sup>6</sup>Plato Phaedo 117 B; Plut. loc. cit.

<sup>7</sup>Galen De Temperamentis 674.

<sup>8</sup>Theophr. Hist. Plant. ix. 16. 9.

<sup>9</sup>Pliny Nat. Hist. xxv. 95; Ar. Frogs 125; A. D. Steger, De Cicuta Atheniensium Poena Publica (Leipzig, 1734), p. 18.

is the reason that the Athenians about to be executed in this way were warned to refrain from animated conversation before imbibing the deadly draught, and to walk slowly after its ingestion.<sup>1</sup> Otherwise, an additional dose would be necessary to have the desired effect. Socrates, having become overheated beforehand over the question of the immortality of the soul, requested a double or triple dose, if necessary.<sup>2</sup> It is to be noted that wine, which by heating the victim would retard the action of the drug in the same way, was used as an antidote in cases of such poisoning.<sup>3</sup> To what extent wine was regarded an effective antidote for hemlock is well illustrated by the stories about this current in antiquity. It was said that habitual drunkards would imbibe the poison in order to be forced to quaff wine.<sup>4</sup> Thieves about to attempt temple robbery would take a dose of hemlock and carry along a flask of wine determined to escape torture in case of arrest, and to drink the wine in the event of the successful issue of their crime.<sup>5</sup> There are several descriptions of poisoning by hemlock but the most famous and the lengthiest account is that of the death of Socrates.

He walked about and, when he said his legs were heavy, lay down on his back, for such was the advice of the attendant. The man who had administered the poison laid his hands on him and after a while examined his feet and legs, and then pinched his foot hard and asked if he felt it. He said, "No"; then, after that, his thighs, and passing upwards in this way he showed us that he was growing cold and rigid. And again he touched him and said that when it reached his heart he would be gone. The chill had now reached the region about the groin, and uncovering his face, which had been covered, he said--and these were his last words--

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<sup>1</sup>Plato Phaedo 63 D-E.

<sup>2</sup>Plato Phaedo 63 E.

<sup>3</sup>Plato Lysias 219 E; Pseudo-Aris. Problem. iii. 23. 874; Pliny Nat. Hist. xiv. 7; xxiii. 23; xxv. 95; Plut. Quaest. Conviv. v. 653 A.

<sup>4</sup>Pliny Nat. Hist. xiv. 18. 2.

<sup>5</sup>Plut. De Garrulitate xiv. 509 E.

"Crito, we owe a cock to Aesculapius. Pay it and do not neglect it." "That," said Crito, "shall be done, but see if you have anything else to say." To this question he made no reply, but after a little while he moved; the attendant uncovered him; his eyes were fixed. And Crito when he saw it closed his mouth and eyes.<sup>1</sup>

This description is confirmed by most ancient authors who agree that hemlock acts by producing a gradual refrigeration proceeding from the lower extremities upward and that death ensues when the heart is affected, without suffering and pain.<sup>2</sup> Plato's account, however, is probably more idealized than realistic. It would be inconsistent with the philosophic import and dramatic tone of the Phaedo to depict agony and suffering at the end. Even in Plato's account, nevertheless, the word ἐκινήθη<sup>3</sup> indicates that death was accompanied by spasms or convulsions. The description given by Nicander<sup>4</sup> is very precise and very likely more in accord with the actual facts. He describes the symptoms in this way. The head is taken with dizziness, the mind becomes obscured, the sight is warped, the eyes roll haggardly, the knees weaken, the throat is pinched, and the extremities become numb. Death comes as a swoon when the circulation and respiration are abated.

In Athens hemlock as a form of capital punishment came to be used in the fifth century.<sup>5</sup> There has been some speculation about the date of introduction, but we are not without evidence to settle this point. Lipsius holds the view that it was intro-

<sup>1</sup>Plato Phaedo 117 E-118 B.

<sup>2</sup>Pliny Nat. Hist. xxv. 95; Ar. Frogs 123-6; Theophr. Hist. Plant. ix. 16. 9; Plut. De Garrulitate xiv. 509 E; Steger, op. cit., pp. 25, 26.

<sup>3</sup>Phaedo 118 A.

<sup>4</sup>Alexipharmaca 186-194.

<sup>5</sup>It was generally held that the people of Ceos were first to resort to poisoning in this way to decrease the population which was growing too large for the food supply. They were supposed to have been responsible for the discovery and application of hemlock (Theophr. Hist. Plant. ix. 16. 9; Palatine Anthology vii. 470; cf. Glotz, "Koneion" in Daremberg-Saglio p. 862).



duced by the Thirty (404 B.C.). "Die Hinrichtung durch den Schierlingsbecher ist 'übrigens, soviel wir sehn, erst durch die Dreiszig in Aufnahme gekommen."<sup>1</sup> He bases his conviction on the statements made in Lysias and Andocides that the Thirty put to death many of their political opponents by causing them to drink hemlock.<sup>2</sup> But in Aristophanes' Frogs which was produced in 405 B.C. Heracles suggests to Dionysus that he drink hemlock as a means of descending to Hades.

Her. Then there's a track, a short and beaten cut,  
By pestle and mortar.

Dio. Hemlock, do you mean?

Her. Just so.

Dio. No, that's too deathly cold a way;  
You have hardly started ere your shins get numbed.<sup>3</sup>

This indicates that hemlock was well known in Athens in 405 B.C., before the advent of the Thirty, and was probably in use already as a form of capital punishment. Indeed it would seem paradoxical to credit the Thirty Tyrants, notorious for their cruelty and utter disregard for human life, with the humaneness of introducing a new and painless way of disposing of their victims.

An interesting passage in Plutarch when taken at face value seems to indicate that victims in certain cases had to pay for their poison.

But when all the rest had drunk of it, the drug ran short, and the executioner refused to bruise another portion unless he were paid twelve drachmas, which was the price of the weight required. However, after a delay of some length, Phocion called one of his friends, and asking if a man could not even die at Athens without paying for the privilege, bade him give the executioner his money.<sup>4</sup>

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<sup>1</sup>Op. cit., p. 77, n. 101; cf. Glotz, Daremberg-Saglio, p. 863.

<sup>2</sup>Lys. xii. 17; xviii. 24; Andoc. iii. 10; cf. Xen. Hell. ii. 3. 56.

<sup>3</sup>123 ff., trans. Rogers. Cf. Bonner and Smith, op. cit., p. 206, n. 2; Hager, op. cit., VIII, 10.

<sup>4</sup>Phocion xxxvi.

Glötz<sup>1</sup> contends from the case of Phocion that political criminals were given the choice of dying a mild death (mort douce) on the payment of the price of the poison, or else of being subjected to a more cruel death. The fact that hemlock was rare in Attica may add to the strength of this view. But the case of Phocion as it is put in Plutarch seems exceptional rather than usual. Nowhere in the Phaedo is it mentioned that Socrates or his friends had to pay for the hemlock administered to the philosopher.

Gernet and Glötz consider death by hemlock "suicide par tolerance."<sup>2</sup> But the poison was administered in prison by the servant (ὀπηρέτης) of the Eleven who were in charge of executions.<sup>3</sup> While we may concede that it is a clever turn of the phrase, poisoning by hemlock constituted, in the last analysis, not suicide tolerated by the state but a formal mode of state execution.<sup>4</sup> The introduction of hemlock as a form of capital punishment is a final proof of that humanity of the Athenians which prompted them to choose a means of execution which caused, as Grote happily puts it, "the minimum of pain as well as the minimum of indignity."

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<sup>1</sup>Daremberg-Saglio p. 863.

<sup>2</sup>Gernet, op. cit., p. 267; Glötz, L'Ordalie, p. 91.

<sup>3</sup>Plato Phaedo 116 B-117 B; Plut. Phocion xxxvi.

<sup>4</sup>Cf. Pliny Nat. Hist. xxv. 95. 1; Seneca De Provid. iii. 10; Tacitus Ann. xv. 64.

## CHAPTER VII

### CONCLUSION

There are a few sporadic references to extraordinary means of execution. Antiphon<sup>1</sup> mentions the case of a slave-girl who was executed on the wheel (τροχισθείσα) for administering poison to her master. It may be, however, that she expired on the wheel as a result of being subjected to torture. Demosthenes speaks of a certain Antiphon who was accused of attempting to set fire to the dock-yard and was put to death on the rack.<sup>2</sup> Since he was not a slave we cannot assume that he was tortured for evidence. We may explain this case, then, only as an unusual form of punishment resorted to on the special decree of the Assembly.<sup>3</sup> Plato<sup>4</sup> puts the rack in the same category with all other exceptionally cruel punishments such as the branding iron. Just as the hanging of the faithless women in the Odyssey<sup>5</sup> must not be confused with a recognized form of state execution in the heroic period but as the private vengeance of an autocratic ruler, so must we not regard these forms of punishment as ordinary and within the proper sphere of penal law. That strangling by means of a noose was resorted to as a form of capital punishment is very doubtful. The most we can infer from Plutarch is that it was

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<sup>1</sup>l. 20.

<sup>2</sup>Dem. xviii. 132-3; Aes. iii. 224; Lys. xiii. 54.

<sup>3</sup>Cf. D'Ooge's note on Dem. xviii. 132-3.

<sup>4</sup>Rep. 362 B; Gorgias 473 C.

<sup>5</sup>xxii. 456 ff.

used as a means of committing suicide.<sup>1</sup> Nor was hanging an Athenian custom, but one peculiar to Macedonia.<sup>2</sup>

The formal sentence of death read, "The condemned shall be handed over to the Eleven."<sup>3</sup> After sentence was pronounced execution followed as a rule without delay.<sup>4</sup> Socrates complained that the Athenians, in contrast to other peoples, deliberated only one day on a capital charge.<sup>5</sup> Only under two circumstances was execution postponed. No one could be put to death before the return of the ship which the Athenians sent annually on a sacred mission to Delos.<sup>6</sup> Pregnant women were granted a temporary reprieve until after the delivery of the foetus.<sup>7</sup> Dio Chrysostomus relates that there was a law in Athens which provided that the criminals' names be erased from the list of demesmen before the execution so that the punishment would seem to fall upon strangers and not upon citizens.<sup>8</sup> Andocides<sup>9</sup> attests that the names of the

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<sup>1</sup>Themistocles xxii. The references to βρόχος in Pollux (viii. 71) and Suidas are not substantiated in any of the sources. For famous suicides in literature cf. the cases of Jocasta in Soph. Oedipus Tyrannus 1263 ff. and Phaedra in Eurip. Hippolytus 775 ff.

<sup>2</sup>Diod. xvi. 35; Plut. Alex. lv-lix.

<sup>3</sup>Lys. xiv. 17; Xen. Hell. i. 7; Din. Con Aristogeiton 13.

<sup>4</sup>Xen. Hell. i. 7. 34; Plut. Phocion xxxvi; Ant. v. 69.

<sup>5</sup>Plato Apol. 37 A-B; Isoc. iv. 21-22. Of the Spartan practice Plutarch relates, "Anaxandridas, being asked why the Spartan Council spent several days on a capital charge, replied, 'Because those who make a mistake on a capital charge cannot change their verdict.'" (Apophth. Lac. 217 A)

<sup>6</sup>Plato Phaedo 58 B.

<sup>7</sup>Aelian V. H. v. 18; Plutarch says that this custom was borrowed from the Egyptians (On Delay of the Deity vii).

<sup>8</sup>Oratio Rhodiaca 611.

<sup>9</sup>i. 51



executed were inscribed on pillars as sinners, but he adds that it was in the cases of religious offenders. Only the prosecutor, says Demosthenes,<sup>1</sup> had the right to witness close at hand the punishment of the victim, and it is to this same usage that Aeschines alludes.

It is not death that is so terrible; the really horrible thing is the insult suffered at the last moment of life. How pitiable a fate to see an enemy's face relaxing into a broad grin, and to hear with one's ears the insults of enmity.<sup>2</sup>

Unlike the Spartan practice,<sup>3</sup> the executions in Athens were carried out during the day.<sup>4</sup> The condemned were sometimes granted, however, the privilege of choosing the hour. The attendant in the prison tells Socrates, "Others have taken the poison very late after the order had come to them and in the meantime have eaten and drunk and some of them enjoyed the society of those whom they loved."<sup>5</sup> The corpses of those who were executed in a way other than by being cast into the barathron were, as a rule, restored to the families for burial.<sup>6</sup> It was only in the case of most flagrant crimes such as treason and sacrilege that burial on Attic soil was interdicted.

Stoning, barathron, apotympanismos, and hemlock represent the four recognized forms of capital punishment from early times down through the historical period of ancient Athens. Each was superseded respectively by the following one in the development of the machinery of state execution. But, as is natural, we find

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<sup>1</sup>xxiii. 69.

<sup>2</sup>ii. 181-2.

<sup>3</sup>Herod. iv. 146. "The secrecy was due partly to the secrecy of Spartan methods, partly to their unwillingness to put a citizen to death" (Howe and Wells, A Commentary on Herodotus, ad loc.)

<sup>4</sup>Cf. Thonissen, op. cit., p. 99; Thalheim, Rechtsaltertümer, p. 141.

<sup>5</sup>Plato Phaedo 116 E.

<sup>6</sup>Ibid. 115 D; Lys xii. 18.

an overlapping of two consecutive means of punishment and a reluctance to discard the old method before the new became firmly established. At the dawn of the historical period and with the introduction of barathron as a form of state execution, stoning still continued until it was outlawed and superseded by barathron. The barathron, in turn, gave way to apotympanismos. Toward the end of the fifth century when the casting of criminals alive into the barathron ceased, hemlock was introduced. But apotympanismos continued in use until very late along with hemlock.











